

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HELEN RUNGE,
Plaintiff,

v.

WALTER J. KELLEY, *et al.*,
Defendants.

Civil Action No. 05-10849-RGS

**ANSWER and JURY DEMAND of MEDIPLEX OF
MASSACHUSETTS, INC. d/b/a SUNBRIDGE CARE AND REHABILITATION
FOR RANDOLPH to the SECOND AMENDED COMPLAINT**

The Defendant, Mediplex of Massachusetts, Inc. d/b/a SunBridge Care and Rehabilitation for Randolph, hereby responds to the allegations contained in Plaintiff's Second Amended Complaint as follows:

I. Jurisdiction

The Defendant Mediplex of Massachusetts, Inc. d/b/a SunBridge Care and Rehabilitation for Randolph disputes the accuracy of the jurisdictional statement contained in the first unnumbered paragraph of the Second Amended Complaint. The Second Amended Complaint fails to make any allegations of damages that would establish the jurisdictional amount set by 28 U.S.C. §1332.

II. Venue

Defendant Mediplex does not dispute that a substantial part of the events that form the basis of the Second Amended Complaint are alleged to have occurred in Massachusetts.

III. Parties

1 - 3. Defendant Mediplex is without sufficient knowledge to either admit or deny the allegations contained within Paragraphs 1 through 3 of the Second Amended Complaint.

4. Admitted that Defendant Mediplex of Massachusetts, Inc. d/b/a SunBridge Care and Rehabilitation for Randolph is a Massachusetts corporation formally trading and doing business as SunBridge Care and Rehabilitation for Randolph with a business address of 49 Thomas Patten Drive, Randolph, Massachusetts. Otherwise, the allegations of Paragraph 4 of the Second Amended Complaint are denied.

[there is no paragraph 5 to the Second Amended Complaint]

IV. Background

6 - 26. Defendant Mediplex is without sufficient knowledge to either admit or deny the allegations contained within Paragraphs 6 through 23 of the Second Amended Complaint. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 6 through 26.

27. The allegations contained in first and second sentences of Paragraph 27 relate to the Plaintiffs subjected observations and cannot be admitted or denied. To the extent these sentences are read to reflect the actual quality of the living conditions at the facility, the allegations are denied. The fifth sentence of Paragraph 27 makes allegations concerning the contents of discussions between the Plaintiff and Defendant Kelly and therefore cannot be admitted or denied by Defendant Mediplex. Any allegation that the Plaintiff was forced by Mediplex to take medications that were unnecessary and impaired her mental capacity are denied. Defendant Mediplex is without sufficient knowledge to either admit or deny the remaining allegations contained within Paragraph 27 of the Second Amended Complaint. To the extent an answer is required, Defendant Mediplex denies these allegations.

28 - 31. Defendant Mediplex denies all allegations contained in Paragraphs 28 through 31 of the Second Amended Complaint that are directed at it. Defendant Mediplex is without

sufficient knowledge to either admit or deny the allegations contained within these paragraphs that are directed at the conduct of other parties. To the extent an answer is required, Defendant Mediplex denies these allegations.

32. Denied.

33 - 37. Paragraphs 33 through 37 of the Second Amended Complaint are directed at the alleged conduct of other parties. Defendant Mediplex is without sufficient knowledge to either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 33 through 37.

38 - 42. Denied.

43. Defendant Mediplex is without sufficient knowledge to either admit or deny the allegations contained within Paragraph 43 of the Second Amended Complaint. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraph 43.

44 - 45. Defendant Mediplex is without sufficient knowledge to either admit or deny the allegations contained within Paragraphs 44 through 45 of the Second Amended Complaint. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 44 through 45.

46. The allegations in the last sentence of Paragraph 45 of the Second Amended Complaint are denied. The remaining sentences of Paragraph 45 characterize federal statutes and regulations. Defendant Mediplex admits that Mediplex owes certain duties to its residents as required by applicable laws and regulations, but denies, as stated, the remainder of the allegations contained in Paragraph 46.

47. Paragraph 47 of the Second Amended Complaint is directed at the alleged conduct of other parties. Defendant Mediplex is without sufficient knowledge to either admit or

deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraph 47.

48 - 49. Paragraphs 48 through 49 of the Second Amended Complaint are directed at the alleged conduct of other parties. Defendant Mediplex is without sufficient knowledge to either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 48 through 49.

Count I

50. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 49 as if fully stated herein.

51 - 52. The allegations of Paragraphs 51 through 52 of the Second Amended Complaint are directed at other parties. Defendant Mediplex is without sufficient knowledge to either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 51 through 52.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count II

53. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 52 as if fully stated herein.

54 - 55. Denied.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count III

56. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 55 as if fully stated herein.

57 - 58. The allegations of Paragraphs 57 through 58 of the Second Amended Complaint are directed at other parties. Defendant Mediplex is without sufficient knowledge to either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 57 through 58.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count IV

59. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 58 as if fully stated herein.

60 - 62. Denied.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count V

63. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 62 as if fully stated herein.

64 - 66. Denied.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count VI

67. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 66 as if fully stated herein.

68 - 71. Denied.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count VII

72. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 71 as if fully stated herein.

73 - 77. Denied.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count VII

72. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 71 as if fully stated herein.

73 - 77. Denied.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count VIII

78. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 77 as if fully stated herein.

79 - 81. Denied.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count IX

82. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 81 as if fully stated herein.

83 - 85. The allegations of Paragraphs 83 through 85 of the Second Amended Complaint are directed at other parties. Defendant Mediplex is without sufficient knowledge to either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 83 through 85.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count X

86. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 85 as if fully stated herein.

86 - 90. The allegations of Paragraphs 86 through 90 of the Second Amended Complaint are directed at other parties. Defendant Mediplex is without sufficient knowledge to either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 86 through 90.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count XI

91. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 90 as if fully stated herein.

92 - 96. The allegations of Paragraphs 92 through 96 of the Second Amended Complaint are directed at other parties. Defendant Mediplex is without sufficient knowledge to either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 92 through 96.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count XII

97. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 96 as if fully stated herein.

98 - 100. The allegations of Paragraphs 98 through 100 of the Second Amended Complaint are directed at other parties. Defendant Mediplex is without sufficient knowledge to either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 98 through 100.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count XIII

101. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 100 as if fully stated herein.

102-103. The allegations of Paragraphs 102 through 103 of the Second Amended Complaint are directed at other parties. Defendant Mediplex is without sufficient knowledge to either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 102 through 103.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count XIV

106. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 105 as if fully stated herein.

107-109. The allegations of Paragraphs 107 through 109 of the Second Amended Complaint are directed at other parties. Defendant Mediplex is without sufficient knowledge to either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 107 through 109.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count XV

110. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 109 as if fully stated herein.

111. Denied.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

Count XVI

112. Defendant Mediplex repeats and restates its answers to Paragraphs 1 through 112 as if fully stated herein.

113-120. The allegations of Paragraphs 113 through 120 of the Second Amended Complaint are directed at other parties. Defendant Mediplex is without sufficient knowledge to

either admit or deny these allegations. To the extent an answer is required, Defendant Mediplex denies the allegations contained in Paragraphs 113 through 120.

WHEREFORE, Defendant Mediplex of Massachusetts, Inc. requests that this Court dismiss the action with costs.

JURY DEMAND

Defendant Mediplex demands a jury trial on all issues so triable.

TRIBUNAL DEMAND

Pursuant to Mass.Gen.L. c. 231, §60B, it is requested that a tribunal be convened within fifteen (15) days to afford the plaintiff an opportunity to present an offer of proof and substantiating evidence sufficient to raise a legitimate question of liability appropriate for judicial injury.

FIRST AFFIRMATIVE DEFENSE

The amount of recovery for alleged conscious pain and suffering, if any, is limited by the provision set forth in Mass.Gen.L. c. 231, §60H.

SECOND AFFIRMATIVE DEFENSE

The amount of recovery for past and future medical expenses, if any, is limited by the provision set forth in Mass.Gen.L. c. 231, §60G.

THIRD AFFIRMATIVE DEFENSE

The imposition of punitive damages in this case constitutes a violation of the Eight or Fourteenth Amendments to the United States Constitution and Part 1, Article XII of the Declaration of Rights for the Commonwealth of Massachusetts.

FOURTH AFFIRMATIVE DEFENSE

If the Plaintiff suffered the injuries or damages alleged, such injuries or damages were caused, in whole or in part, by someone for whose conduct the Defendant was not and is not legally responsible.

FIFTH AFFIRMATIVE DEFENSE

Any and all care provided to the Plaintiff was performed in accordance with the applicable standards, Massachusetts Statutes, the Code of Massachusetts Regulations and applicable federal statutes and regulations.

SIXTH AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction over this matter.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to Mass.Gen.L. c. 201D, §8, a defendant cannot be held liable for carrying out in good faith a health care decision by an agent pursuant to a health care proxy.

Respectfully submitted,

**Mediplex of Massachusetts, Inc. d/b/a
SunBridge Care and Rehabilitation
for Randolph**

by its attorneys,

CERTIFICATE OF SERVICE

I hereby certify that this Document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 12, 2007.

/s/ Michael Williams

/s/ Michael Williams

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